

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DALE H. CACHORA and DEPARTMENT OF HEALTH & HUMAN
SERVICES, PHOENIX AREA INDIAN HEALTH SERVICE, FORT YUMA INDIAN
HOSPITAL, Yuma, AZ

*Docket No. 99-1064; Submitted on the Record;
Issued November 17, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
VALERIE D. EVANS-HARRELL

The issue is whether the Office of Workers' Compensation Programs abused its discretion by denying appellant's request for further merit review under 5 U.S.C. § 8128(a).

On July 9, 1994 appellant, then a 46-year-old housekeeper, sustained an employment-related aggravation of a preexisting ulcer when an oxygen tank fell on his right great toe and opened an old wound. On January 6, 1996 he sustained an employment-related right navicular fracture when he exited a transport vehicle and his foot caught on the brake pedal.¹

On November 24, 1997 appellant filed a recurrence of disability claim (Form CA-2a) alleging that on October 19, 1997 he sustained a recurrence of his July 9, 1994 right toe injury. He alleged that his chronic foot pain resulted from returning to work before his right foot completely healed, causing him to shift his weight to his left foot. Appellant noted that since his July 9, 1994 employment injury, two of his right toes were surgically amputated.

By letter dated December 22, 1997, the Office requested additional factual and medical evidence from appellant to support his recurrence claim, including a notice of recurrence of disability claim form. The Office allowed him 30 days within which to respond to its request.

Appellant filed a second recurrence of disability claim on January 16, 1998 (Form CA-2a) alleging that he sustained a recurrence of disability on October 19, 1998² causally related to his June 9, 1994 employment injury. On the claim form, he alleged that after returning to

¹ The Office adjudicated the 1994 injury under file number 13-1050085. The 1996 injury was adjudicated under file number 13-1150510.

² The Board notes that the date of appellant's alleged recurrence, October 19, 1998, appears to be a typographical error and should read October 19, 1997 as appellant indicated on the claim form that he stopped work on October 20, 1997.

work following his work-related right toe injury, he experienced continued right foot pain and developed left foot pain because he shifted his weight to his left foot in order to relieve his right foot pain. Appellant further alleged that his partial right-foot and toe amputations resulted from his original right toe injury.

By decision dated February 17, 1998, the Office denied appellant's recurrence claim on the grounds that the medical evidence of record was insufficient to show that his foot condition was caused by his July 9, 1994 right toe injury.

By letter dated March 20, 1998, the Office advised appellant that the employing establishment had not submitted his January 6, 1996 traumatic injury claim and, therefore, further evidentiary development was necessary in order to determine whether his alleged recurrence of disability was causally related to that injury. The Office requested additional evidence to support appellant's recurrence claim and allowed him 30 days within which to respond to its request.

By letter dated August 6, 1998, the Office requested additional factual and medical evidence from appellant regarding the issue of whether his October 1997 surgery was related to his January 6, 1996 employment injury. The Office allowed appellant 30 days within which to respond to its request.

By letter dated January 8, 1999, appellant requested reconsideration of the Office's February 17, 1998 decision denying his claim. He argued that his alleged recurrence of disability resulted in the amputation of his fourth and fifth right toes and was causally related to his July 9, 1994 and January 6, 1996 employment injuries.

By decision dated February 9, 1999, the Office denied appellant's reconsideration request on the grounds that it did not raise substantive legal questions or contain new and relevant evidence supporting his recurrence claim.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for further merit review under 5 U.S.C. § 8128(a).

As more than one year has past between the Office's most recent merit decision dated February 17, 1998 and the filing of this appeal postmarked February 20, 1999, the sole decision within the Board's jurisdiction is the Office's February 9, 1999 decision denying appellant's reconsideration request.³

To warrant a grant of a claimant's request for further merit review of his case, the claimant must show that the Office erroneously applied or interpreted a point of law, advanced a new legal argument not previously considered by the Office, or submitted new and relevant evidence not previously considered by the Office.⁴ Where such evidence and arguments are present, it is well established under Board precedent that the Office must reopen a case for

³ *Jeanette Butler*, 47 ECAB 128, 129 (1995).

⁴ *Alton L. Vann*, 48 ECAB 259, 269 (1996); 20 C.F.R. § 10.606.

further merit review.⁵ Section 10.608(b) of the Office's regulations provides that when an application for review of the merits of a claim does not meet at least one of those requirements, the Office will deny the application for review without reviewing the merits of the claim.⁶ The submission of evidence or argument which repeats or duplicates evidence or argument previously submitted and considered by the Office does not constitute a basis for reopening a case for further review on the merits.⁷ Evidence failing to address the particular issue involved also does not constitute a basis for reopening a case.⁸

The Office properly found that appellant's January 8, 1999 reconsideration request did not warrant further merit review of his claim. His request was not supported by new and relevant evidence not previously considered by the Office, nor did it show that the Office erroneously applied or interpreted a specific point of law. To support his request for reconsideration, appellant merely asserted his belief that his toe amputation surgery and alleged recurrence of disability were caused by his July 9, 1994 and January 6, 1996 employment-related injuries.⁹

The decision of the Office of Workers' Compensation Programs dated February 9, 1999 is hereby affirmed.

Dated, Washington, DC
November 17, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Valerie D. Evans-Harrell
Alternate Member

⁵ *Helen E. Tschantz*, 39 ECAB 1382, 1385 (1988).

⁶ 20 C.F.R. § 10.608(b).

⁷ *David E. Newman*, 48 ECAB 305, 308 (1997); *see Eugene F. Butler*, 36 ECAB 393, 398 (1984).

⁸ *Barbara A. Weber*, 47 ECAB 163, 165 (1995).

⁹ The Board notes that the issue of whether appellant's alleged recurrence of disability is causally related to his January 6, 1996 employment injury is still pending before the Office. As the Board's jurisdiction to consider and decide appeals extends only to final decisions issued within one year prior to filing of the appeal, it may not consider that issue in this appeal. *Jimmy L. Day*, 48 ECAB 654 (1997).